



February 20, 2004

ENGROSSED SENATE BILL No. 422

DIGEST OF SB 422 (Updated February 17, 2004 11:42 am - DI 75)

Citations Affected: IC 3-11.

Synopsis: Voting systems certification. Provides that improvements or changes to voting systems may not be marketed, sold, leased, installed, or implemented in Indiana unless approved by the election commission. Authorizes the commission to revoke a certification of a voting system and prohibit a voting system vendor from marketing, leasing, or selling any voting system in Indiana if the vendor violates the certification requirements.

Effective: Upon passage.

Lawson C, Waterman, Antich, Mrvan
(HOUSE SPONSORS — MAHERN, RICHARDSON)

January 12, 2004, read first time and referred to Committee on Elections and Civic Affairs.
January 26, 2004, reported favorably — Do Pass.
February 2, 2004, read second time, amended, ordered engrossed.
February 3, 2004, engrossed.
February 4, 2004, read third time, passed. Yeas 37, nays 12.

HOUSE ACTION

February 6, 2004, read first time and referred to Committee on Elections and Apportionment.
February 19, 2004, amended, reported — Do Pass.

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ES 422—LS 7172/DI 75+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 422

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-11-7-15 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) A proposed
3 improvement or change to a ballot card voting system shall be reported
4 to the election division by:

5 (1) the vendor, if a vendor is involved in the proposed change;
6 and

7 (2) the county election board, if a county is proposing the change.
8 A proposed improvement or change may not be **marketed, sold,**
9 **leased, installed, or implemented in Indiana** before the improvement
10 or change is approved by the commission.

11 (b) A report of an improvement or change must be in the form
12 prescribed by the commission.

13 (c) The election division (or a competent person designated by the
14 commission to act on behalf of the election division) shall review the
15 improvement or change to the voting system and report the results of
16 the review to the commission. The commission shall determine, within
17 a reasonable period of time, whether the improvement or change

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1 impairs the accuracy, efficiency, capacity, or ability to meet the
2 requirements of this chapter or the standards adopted by the
3 commission under section 2 of this chapter.

4 (d) After the commission has approved an improvement or change,
5 the improvement or change may be **marketed, sold, leased, installed,**
6 **or implemented in Indiana.**

7 SECTION 2. IC 3-11-7-17, AS AMENDED BY P.L.126-2002,
8 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 UPON PASSAGE]: Sec. 17. (a) The election division (or a competent
10 person designated by the commission to act on behalf of the election
11 division) may periodically examine a ballot card voting system that the
12 commission has previously approved to determine if the system is still
13 in compliance with all statutory requirements.

14 (b) If the election division or competent person finds that a system
15 examined under subsection (a) fails to meet all requirements and
16 standards, and the commission concurs in these findings, the
17 commission may, by unanimous vote of all of the members of the
18 commission, rescind the commission's approval of the ~~vendor~~ **voting**
19 **system.**

20 (c) If the commission's approval is rescinded under subsection (b),
21 the commission may, by unanimous vote of all of the members of the
22 commission:

- 23 (1) recommend that use of the system be discontinued; and
- 24 (2) prohibit the system from being leased, marketed, or sold for
25 use in Indiana in an election conducted under this title.

26 (d) This subsection applies to a ballot card voting system approved
27 for its initial certification before:

- 28 (1) March 25, 1992; or
- 29 (2) a revision of IC 3-11-15 enacted after July 1, 1997, that
30 imposes additional standards that did not apply to the voting
31 system at the time of the system's initial certification.

32 The commission may, by unanimous consent of its entire membership,
33 require the voting system to be tested by an independent authority
34 designated by the commission. The vendor shall pay any testing
35 expenses under this subsection.

36 (e) If the independent testing authority determines that a voting
37 system tested under subsection (d) does not comply with this article,
38 the commission may, by unanimous consent of its entire membership,
39 prohibit the system from being leased, marketed, or sold for use in
40 Indiana in an election conducted under this title.

41 SECTION 3. IC 3-11-7-19 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) **Except as**

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provided in subsection (g), the approval of a ballot card voting system under this chapter expires five (5) years after the date the commission approves the system.

(b) The vendor of a voting system approved under this chapter may request that the approval be renewed by filing an application with the election division.

(c) The application described in subsection (b) must identify all counties that are currently using the voting system. Before considering the application for renewal, the election division shall give notice by regular United States mail of the application to the circuit court clerk of each county listed in the application.

(d) When the commission considers the application, the commission shall request comments regarding the renewal of the application from any interested person.

(e) The commission may, by unanimous consent of its entire membership, order the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.

(f) The commission shall approve an application for renewal under this section if the commission finds that the voting system:

- (1) complies with the standards prescribed under this chapter;
- (2) has worked effectively where the system has been used; and
- (3) has been adequately supported by the vendor of the system.

(g) If the commission finds that a vendor has marketed, sold, leased, installed, implemented, or permitted the use of a voting system in Indiana that:

- (1) has not been certified by the commission for use in Indiana; or**
- (2) includes hardware, firmware, or software in a version that has not been approved for use in Indiana;**

the commission may revoke the approval granted under this section and prohibit the vendor from marketing, leasing, or selling any voting system in Indiana for a specific period not to exceed five (5) years.

(h) A vendor subject to subsection (g) may continue to provide support during the period specified in subsection (g) to a county that has acquired a voting system from the vendor after the vendor certifies that the voting system to be supported by the vendor only includes hardware, firmware, and software approved for use in Indiana.

SECTION 4. IC 3-11-7.5-5, AS AMENDED BY P.L.176-1999, SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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UPON PASSAGE]: Sec. 5. (a) A proposed improvement or change to an electronic voting system shall be reported to the election division by:

(1) the vendor, if a vendor is involved in the proposed change; and

(2) the county election board, if a county is proposing the change.

A proposed improvement or change may not be **marketed, sold, leased, installed, or implemented in Indiana** before the improvement or change is approved by the commission.

(b) A report of an improvement or change must be in the form prescribed by the commission.

(c) The election division (or a competent person designated by the commission to act on behalf of the election division) shall review the improvement or change to the voting system and report the results of the review to the commission. The commission shall determine within a reasonable period of time whether the improvement or change impairs the accuracy, efficiency, capacity, or ability to meet the requirements of this article.

(d) After the commission has examined and approved an improvement or change to an electronic voting system, the improvement or change may be **marketed, sold, leased, installed, or implemented in Indiana**.

SECTION 5. IC 3-11-7.5-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25. The county election board may provide for the experimental use of an electronic voting system at an election in one (1) or more precincts in the county. The system may be used without a formal adoption **by the county** or purchase but **the electronic voting system** must be approved by the commission **before the system is implemented in or used by the county**. The experimental use of a system at an election **in accordance with this section** is valid for all purposes as if formally adopted **by the county**.

SECTION 6. IC 3-11-7.5-26, AS AMENDED BY P.L.126-2002, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) The election division (or a competent person designated by the commission to act on behalf of the election division) may periodically examine an electronic voting system that the commission has previously approved to determine if that system is still in compliance with all statutory requirements.

(b) If the election division or competent person finds that a system examined under subsection (a) fails to meet all requirements and standards, and the commission concurs in these findings, the

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commission may, by unanimous vote of all of the members of the commission, rescind the commission's approval of the ~~vendor~~ **voting system**.

(c) If the commission's approval is rescinded under subsection (b), the commission may by unanimous vote of all of the members of the commission:

- (1) recommend that use of the system be discontinued; and
- (2) prohibit the system from being leased, marketed, or sold for use in Indiana in an election conducted under this title.

(d) This subsection applies to an electronic voting system approved for its initial certification before:

- (1) March 25, 1992; or
- (2) a revision of IC 3-11-15 enacted after July 1, 1997, that imposes additional standards that did not apply to the voting system at the time of the system's initial certification.

The commission may, by unanimous consent of its entire membership, require the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.

(e) If the independent testing authority determines that a voting system tested under subsection (d) does not comply with this article, the commission may, by unanimous consent of its entire membership, prohibit the system from being leased, marketed, or sold for use in Indiana in an election conducted under this title.

SECTION 7. IC 3-11-7.5-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. (a) **Except as provided in subsection (g)**, the approval of an electronic voting system under this chapter expires five (5) years after the date the commission approves the system.

(b) The vendor of a voting system approved under this chapter may request that the approval be renewed by filing an application with the election division.

(c) The application described in subsection (b) must identify all counties that are currently using the voting system. Before the commission considers the application for renewal, the election division shall give notice by regular United States mail of the application to the circuit court clerk of each county listed in the application.

(d) When the commission considers the application, the election division shall request comments regarding the renewal of the application from any interested person.

(e) The commission may, by unanimous consent of the commission's entire membership, order the voting system to be tested

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by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.

(f) The commission shall approve an application for renewal under this section if the commission finds that the voting system:

- (1) complies with the standards prescribed under this chapter;
- (2) has worked effectively where the system has been used; and
- (3) has been adequately supported by the vendor of the system.

(g) **If the commission finds that a vendor has marketed, sold, leased, installed, implemented, or permitted the use of a voting system in Indiana that:**

- (1) has not been certified by the commission for use in Indiana; or**
- (2) includes hardware, firmware, or software in a version that has not been approved for use in Indiana;**

the commission may revoke the approval granted under this section and prohibit the vendor from marketing, leasing, or selling any voting system in Indiana for a specific period not to exceed five (5) years.

(h) A vendor subject to subsection (g) may continue to provide support during the period specified in subsection (g) to a county that has acquired a voting system from the vendor after the vendor certifies that the voting system to be supported by the vendor only includes hardware, firmware, and software approved for use in Indiana.

SECTION 8. IC 3-11-15-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. **(a) Each application must be in writing, sworn to or affirmed by the applicant, under the penalties of perjury, on a form prescribed by the commission, and contain must satisfy the following information requirements:**

- (1) Provide the name and address of the vendor submitting the application.**
- (2) Provide the telephone number of the vendor.**
- (3) Provide the name, address, and telephone number of the individual representing the vendor regarding the application.**
- (4) Provide the type and model name and number of the submitted voting system, stating the hardware, firmware, and software version numbers of the system.**
- (5) State whether the voting system is a direct record electronic voting system or an optical scan ballot card voting system.**
- (6) Provide a description of the voting system and its**

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capabilities, including **the following:**

- (A) Photographs.
- (B) Engineering drawings. ~~and~~
- (C) Technical documentation.
- (D) Fail-safe and emergency backup information.**
- (E) Environmental requirements for storage, transportation, and operation.**
- ~~(5)~~ **(7) Include** an agreement to pay for the total costs of the examination.
- (8) Provide documentation of the escrow of the voting system's software, firmware, source codes, and executable images with an escrow agent approved by the election division.**
- (9) Provide a functional description of any software components.**
- (10) Provide schematics or flowcharts identifying software and data file relationships.**
- (11) Describe the type of maintenance offered by the vendor.**
- (12) Provide the names, addresses, and telephone numbers of the vendor's maintenance providers.**
- (13) Provide a description of the training courses offered by the vendor for the voting system.**
- (14) Provide user manuals, operator and system manuals, and problem solving manuals.**
- (15) Provide a statement of the current and future interchangeability of all subcomponents of the voting system.**
- (16) Provide documentation from all independent testing authorities that have examined the system.**
- (17) Provide documentation from all election jurisdictions that have previously approved the system.**
- (18) Pay the application fee required under section 4 of this chapter.**

(b) If an application does not include any of the applicable requirements listed in subsection (a), those requirements must be filed with the election division before the application may be considered by the commission.

SECTION 9. IC 3-11-15-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. A vendor ~~may~~ **shall** reapply to the election division for reexamination of a voting system if the commission determines that an improvement or change to a voting system requires a reexamination of that system.

SECTION 10. IC 3-11-15-49 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 49. ~~(a) This section applies to a voting system approved by the commission after July 1, 1997.~~

~~(b) Before a vendor markets, sells, leases, installs, or permits the implementation of a voting system in Indiana, the vendor shall provide for the escrow of system software and source codes in accordance with an agreement between the vendor and the election division: commission must have approved the vendor's application for the approval of the voting system.~~

SECTION 11. IC 3-11-15-51 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 51. (a) This section applies to any voting system change.

(b) To implement the requirements imposed under IC 3-11-7-15 and IC 3-11-7.5-5 for a vendor or county election board to report a proposed improvement or change to a voting system to the commission and for the commission to determine if the improvement or change may be **marketed, sold, leased, installed, or** implemented, the election division shall review and recommend whether the commission should approve proposed software, **firmware**, or hardware change introduced after the system has completed qualification in accordance with this chapter.

SECTION 12. IC 3-11-15-57 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 57. (a) This section applies to a proposed change in a voting system that is not an emergency voting system change.

(b) The vendor or a county election board shall file a written request for the proposed change with the election division under IC 3-11-7-15 or IC 3-11-7.5-5. The request must include the following information:

- (1) The reasons for the proposed change.
- (2) The schedule for making the proposed change, if approved.
- (3) A description of the files that will be changed, including directory information such as the file name and the size of the file (in bytes) both before and after the change is made.
- (4) A brief summary of the changes to be made in each of the files.
- (5) The name and title of each technician who will make the change.
- (6) If the technician is acting for a vendor or other company, the name of the company, and the telephone number and facsimile machine number of the company.

(c) The commission may approve the proposed change after:

- (1) the election division (or a competent person designated by the

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1 commission to act on behalf of the election division) reports to the
2 commission that the vendor has tested the proposed changes on
3 a simulated (mockup) version of the approved system; ~~and~~
4 (2) the vendor supplies the results of this test and makes a similar
5 demonstration to the election division; **and**
6 **(3) the vendor files an affidavit with the election division**
7 **certifying that the proposed change has not yet been**
8 **marketed, sold, leased, installed, or implemented in Indiana.**
9 SECTION 13. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Waterman be added as coauthor of Senate Bill 422.

LAWSON C

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COMMITTEE REPORT

Madam President: The Senate Committee on Elections and Civic Affairs, to which was referred Senate Bill No. 422, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 422 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 422 be amended to read as follows:

Page 14, line 29, after "to" insert "**the voter at**".

Page 18, line 31, after "system's" insert "**software, firmware,**".

Page 18, line 31, after "codes" insert ",".

Page 19, line 38, after "software" insert ", **firmware,**".

Page 21, line 28, strike "Before December 20 after the election," and insert "**After the statements have been prepared,**".

Page 23, line 15, after "executed" insert "**by another individual**".

Page 24, line 40, delete "," and insert "**on or before the date of the election for which the absentee ballot has been printed,**".

Page 25, line 1, delete "." and insert "**or the election division, when arranging for the delivery of unmarked absentee ballots to a county election board under IC 3-11-2.**".

(Reference is to SB 422 as printed January 27, 2004.)

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SENATE MOTION

Madam President: I move that Senator Antich be added as coauthor of Engrossed Senate Bill 422.

LAWSON C

SENATE MOTION

Madam President: I move that Senator Mrvan be added as coauthor of Engrossed Senate Bill 422.

LAWSON C

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Elections and Apportionment, to which was referred Senate Bill 422, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 8.

Page 9, delete lines 1 through 15.

Page 14, delete lines 15 through 42.

Delete pages 15 through 17.

Page 18, delete lines 1 through 2.

Page 20, delete lines 29 through 42.

Delete pages 21 through 31.

Page 32, delete lines 1 through 12.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 422 as reprinted February 3, 2004.)

MAHERN, Chair

Committee Vote: yeas 10, nays 0.

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